IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	W. A. H. Berkvens
Serial No.	:	10/597,969
Confirmation No.	:	8742
Filing Date	:	August 15, 2006
Group Art Unit	:	2451
Examiner	:	Zarni Maung
Attorney Docket	:	NL040176

REPLY BRIEF
On Appeal from Group Art Unit 2451

Date: March 26, 2009

Attn: Board of Patent Appeals and Interferences
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

 In addition to the arguments presented in the Appeal Brief filed November 5, 2008, and

in response to the Examiner's Answer dated January 26, 2009, Appellant submits the following

reply.

REMARKS

This Reply Brief is in response to the Examiner's Answer dated January 26, 2009.

Reconsideration of this application is respectfully requested in view of the arguments contained in the Appeal Brief of November 5, 2008, prior responses and the following remarks.

STATUS OF CLAIMS

a)   Claims 1 – 10 are pending. Claims 1 and 8 – 10 are independent.

b)   Claims 1 – 10 stand rejected and are the subject of this appeal.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1 – 4, 6 and 8 – 10 are properly rejected under 35 U.S.C. §102(e) as being anticipated by Legout et al. (EP 1322094 A1), hereinafter "Legout."

B. Whether claims 5 and 7 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over Legout in view of Kaufman et al. (WO 0191417 A2), hereinafter "Kaufman."

ARGUMENT IN RESPONSE TO THE EXAMINER'S ANSWER

Appellant respectfully responds to the Examiner's Answer below.

A. Claims 1 – 4, 6 and 8 – 10 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Legout.

1. Independent Claims 1, 8 – 10

Appellant respectfully maintains that the Examiner has not established a *prima facie* case of anticipation, as is required under 35 U.S.C. 102(e). For example, Legout fails to disclose each and every feature recited in each of the independent claims 1, 8 – 10.

Claim 1 recites: "a receiver for receiving the content, the receiver comprising: a selector for selecting a distributor of the content out of a plurality of distributors; content-requesting means for requesting the content from the distributor selected; receiving means for receiving the content; identity-determining means for determining an identity associated with the content; and a verifier for verifying an availability of the content at the distributor based on the identity determined."

In the "Response to Argument" section of the Examiner's Answer (section 10, starting on page 12) (hereinafter "Answer") the Examiner asserts that the claimed receiver is a client in Legout (paragraph [0028], lines 26 – 30), alleging that a client is an application or system that obtains results. On page 12 of the Answer, the Examiner asserts that "the examiner has provided the broadest and proper interpretation for the claimed limitation in view of the functions of the receiver because receiver [*sic*] in the cited reference provides all the functions equivalent to that of the claimed receiver." Appellant respectfully traverses such allegations.

Appellant submits that an element classified as a "client" does not necessarily mean that it is an application or system that obtains results. Appellant further submits that if an application or system obtains results, the results obtained or the functions performed are not necessarily equivalent to that of the receiver as claimed.

Appellant submits that the interpretation of the term "client" as the claimed receiver is beyond what Legout set forth in its specification. Legout, paragraph [0028], recites:

> The invention proposes a method for selecting a surrogate server, in a
> content delivery network. It is intended to select the "optimal" surrogate server
> for the requested resource, for a request from a given user (or client). The word
> "optimal" reflects the capacity of the CDN to provide the requested resource to

the user, as fast and as conveniently as possible for the user and, in the case of streams, as uninterrupted as possible.

The "client" that the Examiner referenced was introduced by Legout inside a pair of parenthesis as an alternative to the user. Appellant respectfully submits that there is nothing in the specification of Legout that supports the notion that the "client" plays any bigger role other than that of a user.

In view of the above, Appellant submits that the term "client," being incidentally mentioned by Legout as an alternative to the user, cannot reasonably be interpreted as the claimed receiver.

In the Answer, pages 12 – 14, the Examiner further alleged that the "client," being an application or system that obtains results, performs the functions of a receiver, comprising a selector for selecting a distributor of the content out of a plurality of distributors; identity-determining means for determining an identity associated with the content; and a verifier for verifying an availability of the content at the distributor based on the identity determined. However, Appellant submits that if the receiver is an application or system that performs the above functions, and the "client" is an application or system that obtains results, it does not follow that the "client" is the receiver as claimed. Furthermore, as discussed previously, Appellant submits that nothing in Legout discloses that the above functions are performed by the "client," or that the "client" can be interpreted as a catch-all element to serve as a receiver, selector, identity means and verifier, as claimed.

Therefore, Legout does not disclose a receiver for receiving the content, the receiver comprising: a selector for selecting a distributor of the content out of a plurality of distributors; content-requesting means for requesting the content from the distributor selected; receiving

means for receiving the content; identity-determining means for determining an identity associated with the content; and a verifier for verifying an availability of the content at the distributor based on the identity determined, as claimed in independent claim 1.

Similarly, Appellant's independent claim 8 recites: "a selector for selecting a distributor of the content out of a plurality of distributors; content-requesting means for requesting the content from the distributor selected; receiving means for receiving the content; identity-determining means for determining an identity associated with the content; and a verifier for verifying an availability of the content at the distributor based on the identity determined, and wherein the receiver is arranged to only select the distributor if the verifier verified the availability of the content at the distributor."

In addition, Appellant's independent claim 9 similarly recites: "selecting, by a receiver, a distributor of the content out of a plurality of distributors, requesting, by the receiver, the content from the distributor selected, dispatching the content to the receiver in response to receiving the request for the content from the receiver, receiving the content at the receiver, determining an identity associated with the content, and verifying an availability of the content at the distributor based on the identity determined, and wherein, in the step of selecting, the distributor is only selected if the verifier verified the availability of the content at the distributor."

Furthermore, Appellant's independent claim 10 recites "a computer program product enabling a receiver that is part of a system for distributing a content to select a distributor of the content out of a plurality of distributors, to request and receive the content from the distributor selected, to determine an identity associated with the content, to verify an availability of the content at the distributor based on the identity determined, and to only select the distributor after verifying the availability of the content at the distributor."

As pointed out above in the discussion of claim 1 and for similar reasons, Legout fails to disclose the claimed features as recited in claims 8 – 10. Appellant essentially repeats the above arguments for claim 1, pointing out why independent claims 8 – 10 are not anticipated by Legout.

For at least the foregoing reasons, it is respectfully submitted that a *prima facie* case of anticipation, as is required under 35 U.S.C. 102(e), has not been established and the rejection should be reversed.

2. Claims 2 – 4 and 6

Claims 2 – 4 and 6 depend from claim 1 and inherit all of the features of claim 1. Thus claims 2 – 4 and 6 are patentable for at least the same reasons discussed above with respect to claim 1, from which they depend, with each dependent claim containing further distinguishing features.

B. Claims 5 and 7 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Legout in view of Kaufman.

The Examiner apparently only relies on the secondary reference Kaufman for teaching the additional features recited in the dependent claims and does not allege that Kaufman teaches the features of claim 1, which Legout was relied upon as teaching. Appellant submits that Kaufman fails to cure the deficiencies in Legout with respect to the features in claim 1.

Claims 5 and 7 depend from claim 1 and inherit all of the features of claim 1. Thus claims 5 and 7 are patentable for at least the same reasons discussed above with respect to claim 1, from which they depend, with each dependent claim containing further distinguishing features.

CONCLUSION

In light of the above and Appellant's Appeal Brief, Appellant respectfully submits that the rejections of claims 1 – 10 are in error, legally and factually, and must be reversed.

Respectfully submitted,

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